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SUBJECT: CHAVISTAS GET TOUGH: VENEZUELA'S PENAL CODE

AMENDMENTS

Classified By: POLITICAL COUNSELOR ABELARDO A. ARIAS FOR REASONS 1.4 (d)
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Summary

¶11. (C) The Venezuelan National Assembly approved amendments to the Penal Code January 6, which a prominent Venezuelan lawyers criticized as repressive, and unconstitutional, while a Chavez supporter called them "fascist". The amendments criminalize popular forms of protest such as banging pots and blocking streets, and the transmission through any media of messages which might "upset" the public. They also dramatically raise the jail time for rape, murder, defamation and libel. One of the most controversial features of the amendments is the elimination for many crimes of procedural "benefits" such as bail and alternative sentences. The bill now awaits President Chavez's signature. End Summary.

Partial Reform Passed

¶12. (U) The Venezuelan National Assembly approved a Partial Reform of the Penal Code January 6, modifying 37 existing articles. One of the controversial aspects of the amendments is the modification of Article 508, concerning the punishment for those who engage in noisy protests. The change suppresses the old reference to "unauthorized", and now punishes any demonstration which uses shouts or other noisy instruments to disrupt public meetings, or the public's rest. It also introduces a two-month prison sentence, increased to four months if the victim is a public official. Prior to the change, the punishment was a fine. This amendment is widely interpreted as aimed at the "cacerolazo" pot-banging protests which have been a major feature of opposition demonstrations. The National Assembly also modified Article 358, which is aimed at those who block streets or roads, to punish such activity with four to eight years in prison.

Media Law Gets Teeth

¶13. (U) Several speakers at a symposium on the penal code in December pointed to the modification of Article 297 as the most dangerous aspect of the law. This article outlaws granting material support for, or engaging in terrorist acts using explosive devices or firearms. In a new paragraph, the article stipulates prison terms of two to five years for those who use any media (printed, radio, television, telephone, e-mail, pamphlets) to disseminate false information to cause public panic, or anxiety. Legal expert Juan Martin Echevarria Price called this clause part of a pincer movement with the Media Law. While the Media Law regulates and threatens the financial viability of sanctioned media, this clause allows for criminal action against those deemed responsible for dangerous reports. Legal expert Alberto Arteaga noted that, given the two to five year sentence, a judge could order preventive pre-trial detention, which would give any reporter pause given Venezuela's long trial delays and sub-human prison conditions.

How Dare You!

¶14. (U) Martin and Arteaga criticized the failure to remove Articles 148 and 149, on offending the president and other high ranking government officials. Legislators added new officials instead, and increased the penalties. Legislators also changed Article 216, which punishes those who threaten public officials, to include their family members and homes, and Articles 444 and 446, on defamation and libel respectively, to increase the penalties, and to make the crime easier to prove by stipulating that the written or transmitted act can constitute proof of the crime. In the opinion of Martin, all of these crimes should have been suppressed, to modernize the penal code, rather than being strengthened.

Get Tough on Crime

15. (U) Many of the modifications concern serious felonies, such as rape, murder, kidnapping and robbery. In these crimes, the National Assembly significantly increased penalties and made the penal code more specific. Fifth Republic Movement Deputies Iris Varela and Cilia Flores defended the amendments as a law and order measure. The penalty for rape, which is given a much broader definition, is raised from five to ten years to fifteen to twenty. Kidnapping is defined more specifically and punishments also increased. The Legislators specifically criminalized land invasions in the modification of Article 473, with a five to ten year sentence.

Benefits or Rights?

16. (C) Many of the modified articles contain a special paragraph which states that those implicated in the crimes will not enjoy the procedural "benefits", or be able to take advantage of alternative means of completing the sentence. While the exact meaning of this language is not clear, Judge Monica Fernandez told PolOff that the intention is to force the courts to order pre-trial detention. Fernandez and Arteaga argued that this was unconstitutional, since the Organic Law of Penal Procedures makes trial in freedom a basic principle of the Venezuelan legal system, which cannot be overruled by the penal code.

Harsh Criticism on Both Sides

17. (C) Fernando Avila, Assistant to National Assembly Deputy Luis Tascon (Movimiento Quinta Republica - MVR), told PolOff December 15 that the law was not passed prior to Christmas, as expected, due to opposition among some pro-Chavez deputies to certain aspects of the law. Avila said the bill was "fascist" because it criminalized dissent. He said this was grave because road cutting protests, and noisy demonstrations could also be used by Chavistas to call attention to broken promises and corruption. He said he and others were worried about the direction the government was moving in. According to press reports Deputy Jose Ernesto Rodriguez (MVR) complained on the floor of the Assembly December 9 that he would not vote for an article that, "crushes the constitution of 1999." Avila mentioned Deputy Calixto Ortega (MVR), Jose Ricardo Sanguino (MVR), and Luis Tascon (MVR) as being among the pro-GOV deputies that opposed the law. For the opposition, Deputy Gerardo Blyde (Primero Justicia) called the law the "legislation of revenge", in an magazine interview. He noted that the law illegalizes "all the acts that the opposition has been doing, protests, demonstrations, (quarimba), speaking ill of public officials, pot banging, that is each of the forms of the political dissidence has been classified as a crime in this reform of the Code."

Comment

18. (C) These amendments to Venezuela's Penal Code are designed to give the GOV tools to confront the types of protests which have been used by the opposition for the last three years. The exact effect will depend upon how the GOV implements the law, but clearly the GOV has a significant tool with which to dissuade public protest -- and if that fails, to put protesters in jail. Most of the changes are modifications of existing laws, which make them more repressive and easier to use. The media terrorism clause is an exception, which should be looked at closely from a freedom of the press standpoint, and seen as a key aspect of the media control strategy. The toughening of other criminal sanctions, and the tightening of the right to be tried in freedom will generate little opposition in Venezuelan society, where police executions of criminal suspects draws little reproach from either side, though legal experts may be appalled.

McFarland